



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009  
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20251171MN00006656A7

क	फ़ाइल संख्या FILE NO.	S/49-113/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-430-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	28.11.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. MCH/159/AC/NSM/Gr.2/24-25 dated 04.06.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	28.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Qutone Ceramic Pvt. Ltd., Survey No. 163/1, 163/2, 8-A National Highway, Dhuv Wankaner Rajkot Gujarat



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or	
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



**ORDER-IN-APPEAL**

Appeal has been filed by M/s. Qutone Ceramic Pvt. Ltd., Survey No. 163/1, 163/2, 8-A National Highway, Dhuv Wankaner Rajkot Gujarat, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/159/AC/NSM/Gr.2/24-25 dated 04.06.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant availed the benefit of concessional rate of Basic Customs duty under Serial no. 236 of Notification No. 50/2017-Customs dated 30-06-2017 and discharged BCD @ 5%. An analysis of data (Analytics Report 19/2021-22) studying "Wrong claims of concessional BCD rate @ 5% under Sr.No.236 of Notification No.50/2017-Customs dated 30-06-2017 especially meant for goods of tariff item 32074000" was carried out by the Directorate General Of Analytics And Risk Management, National Customs Targeting Centre, Mumbai. The tariff heading of 3207 inter alia covers "Glass Frit And Other Glass, In The Form Of Powder, Granules Or Flakes". This heading has four categories of goods marked by single (-), which can be noted from the complete description of heading 3207, as given below:

3207	Prepared Pigments, Prepared Opacifiers And Prepared Colours, Vitriifiable Enamels And Glazes, Engobes (slips) Liquid Lustres And Similar Preparations, Of A Kind Used In The Ceramic Enamelling Or Glass Industry; Glass Frit And Other Glass, In The Form Of Powder, Granules or Flakes
3207 10	Prepared Pigments, Prepared Opacifiers, Prepared Colours and similar preparations:
3207 10 10	Prepared organic dye-stuff pigments, dry
3207 10 20	Prepared organic dye-stuff pigments, paste
3207 10 30	Prepared inorganic pigments
3207 10 40	Prepared opacifiers prepared colours and similar Preparations
3207 10 90	Other
3207 20	Vitriifiable enamels and glazes, engobes (slips) and similar preparations:
3207 20 10	Vitriifiable enamels and glazes
3207 20 20	Engobes (slips) and similar preparations
3207 30 00	Liquid lustres and similar preparations
3207 40 00	Glass frit and other glass, in the form of powder, granules or flakes

2.1 It was noted that "all goods", falling under tariff item 32074000, are eligible to a concessional BCD rate @ 5%, as provided under Sr.No. 236 of



Notification No.50/2017-Customs dated 30-06-2017. Entry 236 reads as under:

S. No.	Chapter or heading or subheading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
236	3207 40 00	All goods	5%	--	--

2.2 It is implied that "Vitrifiable enamels and glazes", which are generally in the form of powders or granules, are excluded from tariff item- 32074000, as such goods are specifically falling under tariff item 32072010, eventually do not appear to be eligible for the benefit of concessional rate of Basic Customs duty under Entry/Sr.No. 236 of Notification No.50/2017-Customs dated 30-06-2017. Point (2) with the description "Vetrifiable enamels and glazes" - explains, inter alia, that in most cases, some of the constituents have been fused together in a preliminary process and are present in the mixture in the form of powdered frit ; they may be transparent (whether or not coloured) or rendered opaque by the addition of opacifiers or pigments. These "Vetrifiable enamels and glazes" are generally in the form of powders or granules. Given the above nature of goods (i.e. Vetrifiable enamels and glazers of CTH 32072010) - being transparent and usually in powder or granules form there is a potential risk, as such goods could be mis- declared and/or wrongly classified under tariff item 32074000 for claiming a concessional BCD rate @ 5% under Sr.No.236 of Notification No.50/2017-Customs. Having noted the said possibility of wrong classification, the item descriptions of imported during the period from 01-07-2017 to 29-05-2021 were analyzed. It has been observed that in several cases, "Glazed materials or compounds" have been incorrectly classified under tariff item 32074000 enabling to claim inadmissible concessional BCD rate @ 5%, instead of classifying under CTH-32072010 which attracts BCD @ 7.5%. For illustration purposes, a few such item descriptions are given below:

Item Description
KRATOS-2039 GLAZE COMPOUND : REF.NO: (SVB S/9-17/GATT/08 GVCDTD:29.03.2019)
GRAIN FRIT: CEDM/B/P1 GLAZE GRITS
GLAZE COMPOUND : KRATOS-2010 REF.NO: (SVB S/9-17/GATT/08: GVCDTD:29.03.2019)
MICRONIZADO ANTISLIP R12(CERAMIC GLAZE MATERIAL) XG05 0005
CEBRP63/P1 GLAZE GRITS HVT CLEA (CERAMIC GLAZE MATERIAL)
GLASS FRIT 9 (GLAZE)
TRANSPARENT GLOSSY GLAZE
CEBRP63/P87 GLAZE GRITS HVT CLEA (CERAMIC GLAZE MATERIAL)
GLAZE COMPOUND: MTL-100 (SVB REF.NO: S/9-17/GATT/08 GVC DTD:29.03.2019)
SF 112 REFRACT GLAZE (TO GLAZE THE CERAMIC MATERIAL)



*A*

2.2 The appellant has cleared for home consumption the goods viz. "TRANSPARENT GLOSSY GLAZE"s" on the payment of Basic Customs Duty @ 5% against Sr.No. 236 of Notification No.50/2017-Customs dated 30-06-2017. The said Importer is required to be correctly classify the goods in question under CTH 32072010 and discharge the Basic Customs Duty @7.5% Adv.. The details of the Bills of Entry wherein, the said Importer has short paid the Customs duty on account of improper classification and applying improper rates of Basic Customs Duty are as under: -

S.No.	BE NO.	BE Date	Assessed Value	Total Duty Assessed	Total payable	Duty Diff/ Short paid
1	3624521	12-06-2019	2317190	567480	642673	75193
2	3868836	29-06-2019	2327414	569984	645508	75524
			4644604	1137464	1288181	150717

2.3 It appeared that the Appellant has willfully mis-stated the facts & wrongly availed the benefit of concessional rate of Basic Customs duty which is on lower side by categorizing its goods under CTH 3207400 along with the benefit of Serial No. 236 of Notification No. 50/2017-Customs dated 30-06-2017. Since, the referred provision of the said notification prescribes a concessional rate of Basic Customs Duty of 5% Adv., whereas, the CTH 32072010 having the classification of "Vetrifiable enamels and glazers" has a higher rate of Basic Customs Duty, (which appears to be apt for the instant goods under import i.e. "TRANSPARENT GLOSSY GLAZE"s") the said Importer has tried to evade differential duty @ 2.5% even though the goods under importer are not eligible for any concessional rate of duty.

2.4 In the light of the documentary evidences, as brought out above and the legal position, it appeared that a well thought out conspiracy was hatched by the appellant to defraud the exchequer by adopting the modus operandi of mis-declaring the goods under CTH 32074000 for availing the benefit of concessional rate of BCD under Serial No. 236 of Notification No. 50/2017-Customs dated 30-06-2017.

2.5 In view of the above facts Show Cause Notice vide F. No. CUS/APR/SCN/847/2023-Gr2-/O/o PrCommr-Cus-Mundra dated 03.11.2023 was issued to the Appellant to show cause with following proposals:

- i. The goods having assessable value of 46,44,604/- covered under Bills



of Entry as detailed herein above, should be confiscated under Section 111(m) of the Customs Act, 1962;

- ii. The differential duty worked out to 1,50,717/- (Rupees One Lakh Fifty Thousand Seven Hundred Seventeen Only) for Bills of Entry as detailed herein above, should be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable;
- iii. Penalty should be imposed upon them under Section 114A of the Customs Act, 1962.

2.5 Consequently, the Adjudicating Authority passed the following order:

- i. He denied to assess the Bill of Entry under Serial No. 236 of Notification No.50/2017-Customs dated 30-06-2017 which prescribes BCD @ 5% only for Customs Tariff Heading 32074000 and the same should be re-assessed under classification CTH 32072010 which attracts BCD @7.5%.
- ii. He ordered to pay the differential duty amounting to Rs. 1,50,717/- (Rupees One Lakh Fifty Thousand Seven Hundred Seventeen Only) in respect of Bill of Entry No 3624521 dated 12.06.2019 and Bill of Entry No. 29.06.2019 filed by Importer M/s. Qutone Ceramic Pvt. Ltd (IEC: 2496002351) occurred after re-assessment, under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962.
- iv. Since the goods were not available for confiscation, he refrained from imposing a redemption fine on the appellant under section 125 of the Customs Act, 1962.
- iii. He imposed a penalty of Rs. 1,50,717/- (Rupees One Lakh Fifty Thousand Seven Hundred Seventeen Only) on the importer under Section 114A of the Customs Act, 1962



**SUBMISSIONS OF THE APPELLANT:**

3. Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The appellant would like to emphasize the fact that SCN as well as assessment order passed by adjudicating authority is erroneous in nature since it is passed without going into detailed merits of the case and hence demand raised is itself invalid. It is important to note that the assessable value of two Bills of Entry as mentioned in Impugned OIO is actually incorrect as the same is derived by erroneously multiplying the actual assessable value of both the BOE by 2 (two) which resulted in doubling of all the calculations of the SCN as well as impugned order. The detailed summary of calculation is as below:

<b>Invoice No:</b>	<b>XP55.576</b>	<b>XP55.954</b>
<b>Bill of Entry</b>	<b>No: 3624521</b>	<b>No: 3868836</b>
Assessable value as per Impugned Order (A)	23,17,190	23,27,414
Actual Assessable value (B)	11,58,595	11,63,707
<b>Difference (A-B)</b>	<b>11,58,595</b>	<b>11,63,707</b>

3.2 Thus, it is apparent from the above table that assessable value as mentioned in Impugned order is twice the actual assessable value. Thus, it makes crystal clear that base data derived by department pertaining to assessable value is incorrect. Further, the appellant also submitted that the Pre-SCN dated 24.05.2023 was issued to the appellant with regards to matter of 'Wrong CTH Classification' on vide F. No. CUS/APR/BE/MISC/613/2023-Gr-2-O/o Pr Commr-Cus-Mundra wherein the assessable value was correctly mentioned in the said Pre-SCN for both the above Bills of entry against which the reply was duly submitted by appellant on 06.06.2023.

3.3 In fact, the department has made above error by doubling the figures of actual assessable value only while issuing the SCN and impugned order and raised the demand without verifying the actual facts. Not only error has been done while deriving differential duty amount but officer has erred in mentioning the duty actually paid. Actual duty including BCD, Cess and GST



paid is Rs 2,38,740/- and Rs 2,84,991/- respectively while SCN is issued with amount paid as Rs 5,67,480/- and Rs 5,69,984/- respectively which reflects that notice has been merely issued without proper analysis of facts. Therefore, the demand raised in impugned OIO on the basis of incorrect assessable value of both the Bills of entry is invalid and thus liable to be dropped on account of issuance of erroneous impugned order.

3.4 On the receipt of assessment order, the appellant reviewed of the whole calculation of demand as raised in Impugned order, at that time it came their notice that there is error in calculation of demand of BCD by the department as explained in Para above. Therefore, the appellant recalculated the duty based on the actual assessable value of both the Bills of entry and derived at the before figures-

Particulars	BOE No: 3624521	BOE No: 3868836	Total
<b>Actual Assessable Value</b>	<b>11,58,595</b>	<b>11,63,707</b>	<b>23,22,302</b>
A. BCD @7.5%	86,895	87,278	1,74,173
B. Surcharge/ Cess @10%	8,689	8,728	17,417
<b>Total (A+B)</b>	<b>12,54,179</b>	<b>12,59,713</b>	<b>25,13,892</b>
C. IGST @18% (on A+B)	2,25,752	2,26,748	4,52,501
<b>D. Total Duty Inc GST (A+B+C)</b>	<b>3,21,336</b>	<b>3,22,754</b>	<b>6,44,090</b>
Less: Actual BCD paid @ 5% as per Noti. No.50/2017-Customs dated 30-06-2017	-2,83,740	-2,84,991	-5,68,732
<b>E. Actual Differential Duty</b>	<b>37,596</b>	<b>37,763</b>	<b>75,359</b>
<b>F. Penalty @ 25% on point-E above</b>	<b>9,399</b>	<b>9,441</b>	<b>18,840</b>
<b>G. Int. @ 15% p.a</b>	<b>28,274</b>	<b>28,400</b>	<b>56,674</b>
<b>Total (E+F+G)</b>	<b>75,269</b>	<b>75,603</b>	<b>1,50,873</b>

3.5 Without admitting the allegations raised by department in impugned order, the appellant in good faith just to buy piece of mind has made payment of differential duty (BCD+Cess+GST) of 2.5% along with interest at 15% and penalty at 25% as mentioned in above table of Rs 1,50,873/- through DD No. 709654 dated 02.07.2024 drawn on State Bank of India, Overseas Branch, Ahmedabad vide TR-06 challan No. 692 dated 03.07.2024 under protest. The appellant has also submitted the letter to the adjudicating authority along with the copy of TR-



*[Handwritten signature]*

6 dated 03.07.2024 intimating the payment of duty in good faith and the error in calculation of duty.

3.6 'To protest' is a fundamental right for a taxpayer and paying tax under protest is a luxury of the fundamental right, and no special rules are required. 'Under protest' is an essential component of the 'natural justice principles' It is to be noted that payment of duty under protest of Rs 1,50,873/- doesn't mean our acceptance of the tax liability as mentioned in impugned order.

3.7 The appellant being an importer has cleared for home consumption the goods namely 'Transparent Glossy Glaze' on the payment of basic customs duty of 5% against Sr.No.236 of Notification No.50/2017-Customs dated 30-06-2017 by classifying the same under CTH 3207000 as below:

Invoice No	XP55.576	XP55.954	
Bill of Entry	No. 3624521	No. 3868836	Total
Assessable Value	11,58,595	11,63,707	23,22,302
A. BCD @5%	57,930	58,185	1,16,115
B. Surcharge/ Cess @10%	5,793	5,819	11,612
<b>Total</b>	<b>12,22,318</b>	<b>12,27,711</b>	<b>24,50,029</b>
C. IGST @18% (on A+B)	2,20,017	2,20,988	4,41,005
<b>Total Duty paid</b>	<b>2,83,740</b>	<b>2,84,991</b>	<b>5,68,732</b>

3.8 However, the department is of the view that such imported goods are specifically covered under CTH 32072010 and hence liable for 7.5% BCD and therefore the benefit of concessional duty of 5% availed by appellant as per Notification No.50/2017-Customs dated 30-06-2017 is not valid. Further, the department is of the view since the imported goods i.e 32072010 Transparent glossy glaze is specifically covered under CTH which covers 'Vitrifiable enamels and glazes' in form of powder or granuels and hence excluded from CTH 32074000 and therefore the benefit of concessional duty of 5% cannot be availed. In this regard, the appellant has stated that the imported goods are very well covered by the Notification no. 50/2017-Customs dated 30- 06-2017 which is reproduced as below:

S. No.	Chapter or heading or subheading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
236	3207 40 00	All goods	5%	--	--

A✓



3.9 Further, both the bills of entry were produced before the departmental officer and once they were convinced, the same were assessed to duty at 5% and goods were released thereafter. The absence of any objection or discrepancy raised by the assessing officer or examining officer during the assessment process further supports our position. All relevant facts regarding the import of "Grain Frit" and "Glaze Grits HVT Clea" under HS Code 32074000 were transparently presented before the proper officer. The department's conclusion, limiting the benefit of the notification to "Glass Frit" only and not extending to "Transparent Glossy Glaze," seems to stem from a misunderstanding of the interchangeable nature of the terms "Frit," "Grain Frit," "Glossy Glaze," "Glaze Grit." Etc. These terms are recognized within the industry as being synonymous and are often used interchangeably depending on the supplier.

3.10 It is imperative to emphasize that the department has not provided any concrete evidence or documentation to support the notion that "Transparent Glossy Glaze" is an entirely different product category from "Glass Frit." The absence of such evidence raises questions about the validity of the department's stance on the matter.

3.11 The terminology 'Transparent' used in the description itself defines that the goods imported are Frit. Transparency can be found in material like glass, plastic or even water. In this case since the examining officer has ruled out the presence of any other material other than Transparent Glaze, it would be safe to come to the conclusion that the goods are indeed in form of transparent glass which otherwise is also known as "Glass Frit". Moreover, it is common practice for suppliers to use different terms to maintain uniqueness of their product descriptions. Therefore, assuming that "Transparent Glossy Glaze" is an entirely distinct product from "Glass Frit" is unfounded.

3.12 Appellant has drawn an attention towards the fact that one container vide shipping bill number 3868836 was selected for examination by one of the custom officer by reference order no. 10023149 dated 01.07.2019 and same was duly opened and examined by appropriate officer in compliance with Customs Rules and said officer after due satisfaction of imported goods and its clarification had instructed clearance of goods without any objection. In view of the above, the appellant is of the view that the duty discharged at the



concessional rate of 5% as per the notification No.50/2017-Customs dated 30-06-2017 is appropriate and therefore order demanding differential duty of 2.5% by re-classifying the imported goods under CTH 32072010 instead of CTH 32074000 is not valid and hence the impugned order is liable to be dropped.

3.13 The appellant has requested to take note of section 28(4) of the Customs Act, 1962 as imposed on the appellant in impugned OIO which specifically deals with the following three subject matters and comes into operation in the presence of collusion or willful mis-statement or suppression of facts to evade tax-

A Duty has not been levied or not paid or short levied or short paid;

Duty has been erroneously refunded;

Interest payable has not been paid, part-paid or erroneously refunded.

Further, the provisions of Section 28(4) allow the adjudicating authority to invoke the extended period of limitation of 3 years over and above the normal period of 2 years for issuance of SCN only in case any willful suppression, misstatement of facts or misdeclaration. It is noteworthy that in present case, at no stage did the appellant withhold any information or suppress facts from the department. The proper officer, having access to all necessary details, assessed the goods and allowed their release after being convinced about the accuracy of the description and the eligibility for the claimed benefits. Had there been any doubt or ambiguity regarding the nature of the imported goods, it was within the purview of the assessing or examining officer to send samples to the Revenue Lab for testing. However, no such action was deemed necessary, indicating the officers' confidence in the correctness of the classification and benefit claimed. The lack of objections during the initial assessment, combined with the absence of any request for further testing, underscores the validity of our claim. We contend that the entire process was conducted in accordance with the established procedures and regulations, providing no grounds for the current allegations. In the entire notice, there is not even single iota of evidence which can prove any suppression of facts against the appellant. It is settled law that allegation of collusion, willful misstatement or fraud cannot be invoked when the department was aware of the facts.

3.15 All the relevant documents were produced before the customs department and the shipping bills filed for assessment also contains proper



description of goods along with HS code applicable thereon. Thus, there is no suppression of facts in current case. Therefore, in current case, the extended period of limitation shall not be invocable as section 28(4) of the Customs Act 1962 in the absence of any willful suppression, misstatement of facts or misdeclaration.

3.16 With regard to above, it is clear that the impugned OIO issued under section 28(4) of Customs Act, 1962 demanding differential BCD of 2.5% from the company is not valid. In continuation to same, the appellant has referred to Section 28(10B) of the Customs Act, 1962 and submitted that the notice issued under section 28(4) shall be deemed to have been issued under section 28(1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly. Therefore, in current case, since the charges of collusion or any wilful mis-statement or suppression of facts to evade duty has not been established against appellant with any evidence in its support, the notice shall be deemed to be issued under section 28(1) of Customs Act, 1962 as per the provisions of Section 28(10B) Customs Act, 1962.

3.18 In continuation to above, the appellant would again like to reiterate the provisions Section 28(1) which states that the SCN must be issued within a period of two years from the date of payment of duty. However, in current case, the SCN dated 03.11.2023 is time barred in view of Section 28(1) of the Customs Act, 1962 as it is issued beyond the period of 2 years, and hence the demand is not sustainable since the SCN itself is void ab initio. The above ground was also raised by appellant during submission at the SCN level. However, the adjudication authority without considering the submission made by appellant, issued Impugned OIO on similar grounds which is inappropriate in view of natural justice.

3.20 Similar to their case, in matter of Power Grid Corporation of India Ltd. Vs Commissioner of Customs ((2024) 19 Centax 350 (Tri.-Ahmd)), it was held that Where there was no misdeclaration, only the issue was of interpretation of notification entry and importer had very strong prima facie case on merit, and there was no change of circumstances from date of filing of bill of entry till issue



*[Handwritten signature]*

of show cause notice, suppression of fact or wilful misstatement or fraud or collusion etc., could not be invoked for extended limitation period of three years. Since, the suppression of fact or wilful misstatement or fraud or collusion etc., cannot be invoked in the present case. Therefore, the show cause notice issued after almost three years is clearly barred by limitation. Consequently, the demand being under extended period cannot sustain. Accordingly, the impugned order is set aside, appeal is allowed.

3.21 In the similar type of facts in various judgments, the Hon'ble Supreme Court has taken a view that the extended period cannot be invoked as referred below:

- Northern Plastic Ltd. v. Commissioner [1998 (101) E.L.T. 549 (S.C.): "23.
- Continental Foundation Jt. Venture v. Commissioner Central Excise, Chandigarh-1, 2007 (216) ELT 177 (SC).
- Tamil Nadu Housing Board v. Collector of Central Excise, Madras 1994 (74) ELT. 9 (SC)

3.22 Section 114A of Customs Act, 1962 provides for mandatory penalty in case of suppression of facts, wilful misstatement etc. For the sake of brevity, the provisions of Section 114A of Customs Act, 1962 are reproduced below:

*114A. Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined*

*Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall*




*be twenty-five per cent of the duty or interest, as the case may be, so determined*

3.23 A mandatory penalty equal to the duty or interest short paid or not paid or erroneously refunded is payable if such non-payment or short payment or erroneous refund was due to collusion, wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or rules with intent to evade payment of duty. Thus, from the above it is clear that Penalty can be imposed under section 114A of Customs Act only in case of suppression of facts, wilful misstatement etc. Hence, show cause notice must indicate as to which of the various act of omissions have been committed by appellant. Mere general show cause notice is not sufficient to impose penalty under section 114A. Further, If extended period of limitation is not applicable, penalty (under section 114A) is not imposable as decided by apex court in case of *Pahwa Chemicals v. CCE 2005 (189) ELT 257 (SC)*. In light of the above, it is submitted that the penalty as imposed in Impugned Order under section 114A of Customs Act, 1962 is not valid since the allegation of suppression, wilful misstatement etc are not proved against the appellant as per the provisions of Section 28(4) of Customs Act, 1962.

3.24 The appellant concluded the appeal as - Firstly, the figures of assessable value as derived by department in impugned order based on which the demand of differential duty is created is incorrect, therefore the SCN issued is erroneous in nature and hence not valid. Secondly, the differential duty of 2.5% along with interest and penalty total amounting to Rs 1,50,873/- is paid by the appellant under 'protest' just to buy piece of mind and doesn't amount to acceptance of liability. Thirdly, the imported goods are correctly declared under CTH 32074000 and thereby the duty is correctly discharged at the concessional rate of 5% of BCD by availing the benefit of Sr.No.236 of Notification No.50/2017-Customs dated 30-06-2017 and such imported goods shall not be covered under CTH 32072010 and thus not liable for BCD of 7.5% as alleged by the department. Fourthly, the provisions of Section 28(4) of Customs Act 1962 are not applicable since no evidence of suppression of facts, collusion or wilful misstatement of facts etc are produced against appellant in impugned order and thereby the invocation of period of limitation for issuance of SCN is also not valid. Fifthly, as per Section 28(1) and Section 28(10B) of the Customs Act, 1962, the SCN issued is time barred and therefore the demand raised in impugned order is liable to be dropped. Sixthly, since the allegation suppression of facts,



collusion or wilful misstatement of facts etc are not proved against appellant, the penalty imposed as per section 114A of Customs Act, 1962 is inappropriate and liable to be dropped.

#### **PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 02.07.2025, following the principles of natural justice wherein Shri Nitesh Jain, Chartered Accountant appeared for the hearing and he re-iterated the submission made at the time of filing the appeal and also submitted additional submissions wherein they relied on a judgement in the case of Vishal G Trivedi, M/s Vidres India Ceramics Pvt Ltd. vs. CC Ahmedabad 2019 (367) E.L.T. 660 (Tri.-Ahmd) and 2019 (4) TMI 945 - CESTAT Ahmedabad, wherein the facts were identical to their case.

#### **DISCUSSION AND FINDINGS:**

5. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that the following issues need to be addressed:

- (i) Whether the OIO is fundamentally flawed due to an admitted error in determining the Assessable Value of the imported goods, as alleged by the Appellant to be precisely twice the actual value in the OIO's calculation table.
- (ii) Whether the imported goods, 'Transparent Glossy Glaze', are correctly classifiable under CTH 3207 40 00 ('Glass frit and other glass, in the form of powder, granules or flakes') at 5% BCD, or under CTH 3207 20 10 ('Vitrifiable enamels and glazes') at 7.5% BCD, especially in light of the CESTAT's decision in the Vishal G. Trivedi / Vidres case.
- (iii) Whether the invocation of the extended period of limitation under Section 28(4) and the consequent imposition of penalty under Section 114A of the Customs Act, 1962, are sustainable in the absence of



established 'collusion or any wilful mis-statement or suppression of facts'.

5.2 The primary contention raised in the appeal is that the Assessable Value used as the base for calculating the differential duty in the SCN and confirmed in the OIO is erroneous. The Appellant provides a table demonstrating that the assessed value in the OIO is exactly twice the actual assessable value reported in the Bill of Entry (BOE).

BOE No. 3624521: OIO Value ₹ 23,17,190/- vs. Actual Value ₹ 11,58,595/-.

BOE No. 3868836: OIO Value ₹ 23,27,414/- vs. Actual Value ₹ 11,63,707/-.

5.3 This admitted error, if proven correct by the original record, strikes at the very root of the demand calculation, as it results in a doubling of the total differential duty demanded. An order passed on a fundamentally incorrect factual premise regarding the valuation base cannot be allowed to stand. It is a settled principle of natural justice and proper administration that the basic facts underpinning a demand must be correct. Therefore, the matter requires immediate re-examination and correction at the adjudicating authority level.

5.4 The core dispute revolves around the classification of 'Transparent Glossy Glaze' under CTH 3207. The Revenue insisted on CTH 3207 20 10 ('Vitrifiable enamels and glazes' at 7.5%) , while the Appellant chose CTH 3207 40 00 ('Glass frit and other glass...' at 5%). The Appellant has rightly relied on the decision of the CESTAT, Ahmedabad, in the case of Vishal G. Trivedi, M/s Vidres India Ceramics Pvt Ltd. vs. CC Ahmedabad, 2019 (367) E.L.T. 660 (Tri.-Ahmd). The Appellant asserts that the facts and legal arguments in their case are identical to the Vidres case. The Vidres case also involved the same CTH dispute, specifically concerning the classification of 'Glass Frit' versus 'Vitrifiable Enamels and Glazes'. The Tribunal held that the Revenue failed to discharge its burden of proof as no chemical examination/test of the goods was conducted to show that the material was indeed 'Ceramic Glaze' or 'Vitrified Glaze' and not 'Glass Frit'. It specifically held that the commodity's classification should not be solely based on terminology used by the supplier or the importer's statement. The Vidres judgment explicitly held that: "In the instant case the predominant material is glass frit and thus going by the "General Rules for Interpretation" viz. Rule 2 and 3, the impugned goods deserves classification as "frit" only.". The Tribunal set aside the differential duty demand and allowed the appeal.



*[Handwritten signature]*

5.5 Given that the Vidres decision is a binding jurisdictional CESTAT precedent on nearly identical facts and legal issues, the adjudicating authority is bound to follow it unless distinguishable facts are presented, or there is a higher court ruling to the contrary. Since the original OIO appears to rely only on the Analytics Report, HSN notes, and the assumption of mis-declaration without demonstrating the mandatory technical basis required by the Vidres judgment, the matter necessitates a re-evaluation at the original level.

5.6 The OIO invoked the extended period of limitation under Section 28(4) and levied a penalty under Section 114A on the grounds of alleged 'wilfully mis-stated the facts' and 'conspiracy... to defraud the exchequer by adopting the modus operandi of mis-declaring the goods'. The Appellant argues that since the core issue is one of interpretation and classification and not deliberate suppression/collusion, the extended period cannot be invoked. Furthermore, the goods were cleared after an examination of one BOE and no objection was raised previously. The CESTAT in the binding Vidres case specifically addressed this in Para 13, holding: *"We find that the issue involved is of interpretation and classification of goods... We are thus of the view that mala fide intention or suppression on the part of the Appellant is not proved. We thus hold that the demand of differential duty for extended period is barred by limitation of time also. Consequently the penalty imposed is also not sustainable."* This decision aligns with the judgments cited by the Appellant, such as Continental Foundation Jt. Venture and Northern Plastic Ltd., which mandate a strict and high threshold for invoking the extended period under Section 28(4). Given the binding precedent explicitly setting aside the penalty and the extended period in an identical classification dispute, the Adjudicating Authority must re-examine this aspect.

5.7 The fundamental error in the assessable value calculation, coupled with the clear and binding jurisdictional precedent on the classification issue that addresses both the merit and the limitation, makes it necessary to set aside the impugned OIO and remand the matter back to the original Adjudicating Authority for de novo consideration.

6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:




- (i) The impugned Order-in-Original No. MCH/159/AC/NSM/Gr.2/24-25 dated 04.06.2024 is hereby set aside.
- (ii) The matter is remanded back to the Adjudicating Authority with a direction to carry out a de novo adjudication after addressing the issues viz. Verify and Correct Assessable Value, Re-adjudicate Classification in light of Vishal G. Trivedi, M/s Vidres India Ceramics Pvt Ltd. vs. CC Ahmedabad, 2019 (367) E.L.T. 660 (Tri.-Ahmd), Re-evaluate Limitation and Penalty.
- (iv) The Adjudicating Authority shall afford the Appellant a reasonable opportunity of being heard and shall pass a fresh speaking order as expeditiously as possible.

7. The appeal filed by M/s Qutone Ceramic Private Limited is hereby allowed by way of remand.



સત્યાપિત/ATTESTED

અધીક્ષક/SUPERINTENDENT  
સીમા શુલ્ક (અપીલ), અમદાવાદ.  
CUSTOMS (APPEALS), AHMEDABAD

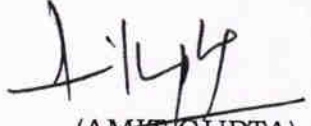
F. No. S/49-113/CUS/MUN/2024-25

By Speed post /E-Mail

To,  
M/s Qutone Ceramic Private Limited,  
Survey no. 163/1 and 163/2,  
Tal. Wankaner, Dhuva, Rajkot, Gujarat-363622

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Assistant Commissioner of Customs (Gr-2), Custom House, Import Section, Mundra.
4. Guard File.

  
(AMIT GUPTA)  
Commissioner (Appeals),  
Customs, Ahmedabad

Date: 28.11.2025

